

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 EASTERN WASHINGTON REGION
3 STATE OF WASHINGTON

4 FUTUREWISE,

Petitioner,

Case No. 14-1-0003

FINAL DECISION AND ORDER

7 v.

8 BENTON COUNTY,

Respondent.

11 And

12 THE CITY OF KENNEWICK
13 AND THE KENNEWICK INDUSTRIAL
14 DISTRICT, LLC

Intervenors

18
19 **I. SYNOPSIS**

20 Petitioner Futurewise challenged Benton County's adoption of Resolution 2014-191
21 relating to the expansion of the City of Kennewick's urban growth area (UGA) into 1,263
22 acres of agricultural lands. Although the state legislature recently recognized UGA
23 amendments for industrial purposes, the Board found Benton County's action was not
24 consistent with the Growth Management Act's requirement to base the addition on planned
25 population growth and violated the GMA's goals and requirements to protect agricultural
26 lands and prevent developmental sprawl. The Board concludes that Petitioner has carried
27 its burden of proof in demonstrating that Benton County's action in adopting Resolution
28 2014-191 violated several Benton County Wide Planning Policies and several sections of
29 the GMA.
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1 In this case, the City has apparently started with “a great site” which, having excellent
2 freeway access, seems easier and more cost effective to develop than existing lands
3 already in its UGA and the UGAs of other cities in Benton County. This amendment was
4 intended to add additional industrial lands to the UGA areas of Kennewick and Benton
5 County for economic reasons, by using section 1301 of the GMA. As implemented,
6 however, it violates this and other sections of the Act designed to protect agricultural lands
7 and prevent sprawl. Additional implementation actions are needed to comply with all the
8 requirements of the GMA, which are designed to protect the state’s important resource
9 lands and the orderly development and redevelopment of city and county UGAs.
10

11 **II. BURDEN OF PROOF AND STANDARD OF REVIEW**

12 For the purposes of Board review of the comprehensive plans and development
13 regulations adopted by local governments, the GMA establishes three major precepts: a
14 presumption of validity; a “clearly erroneous” standard of review; and a requirement of
15 deference to the decisions of local governments.
16

17 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
18 amendments to them are presumed valid upon adoption:
19

20 Except as provided in subsection (5) of this section, comprehensive plans
21 and development regulations, and amendments thereto, adopted under this
22 chapter are presumed valid upon adoption.

23 The statute further provides that the standard of review is whether the challenged
24 enactments are clearly erroneous:¹

25 The board shall find compliance unless it determines that the action by the
26 state agency, county, or city is clearly erroneous in view of the entire record
27 before the board and in light of the goals and requirements of this chapter.

28 In order to find the County’s action clearly erroneous, the Board must be “left
29 with the firm and definite conviction that a mistake has been made.”²
30 Within the framework of state goals and requirements, the Board must grant
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¹ RCW 36.70A.320(3).

² *Dept. of Ecology v. PUD1*, 121 Wn.2d 179, 201 (1993).

1 deference to local governments in how they plan for growth.³

2 In recognition of the broad range of discretion that may be exercised by
3 counties and cities in how they plan for growth, consistent with the
4 requirements of this chapter, the legislature intends for the board to grant
5 deference to counties and cities in how they plan for growth, consistent with
6 the requirements and goals of this chapter. Local comprehensive plans and
7 development regulations require counties and cities to balance priorities and
8 options for action in full consideration of local circumstances. The legislature
9 finds that while this chapter requires local planning to take place within a
10 framework of state goals and requirements, the ultimate burden and
11 responsibility for planning, harmonizing the planning goals of this chapter,
12 and implementing a county's or city's future rests with that community.

11 The burden is on Petitioners to overcome the presumption of validity and
12 demonstrate that any action taken by the County is clearly erroneous in light of the goals
13 and requirements of chapter 36.70A RCW (the GMA).⁴ Where not clearly erroneous, and
14 thus within the framework of state goals and requirements, the planning choices of local
15 government must be granted deference.
16

17 III. PROCEDURAL HISTORY

18 The Petition for Review was filed on May 2, 2014. The City of Kennewick and
19 Kennewick Industrial District LLC intervened in support of the County. The Hearing on the
20 Merits was held on September 18, 2014 in Kennewick, Washington with the Eastern
21 Washington Regional Panel comprised of Presiding Officer Chuck Mosher and Board
22 Members Raymond L. Paoella and Margaret Pageler. The parties participating in the
23 Hearing on the Merits were: Petitioner Futurewise appearing through its attorney Tim
24 Trohimovich, Respondent Benton County appearing through its attorney Ryan Brown,
25 Intervenor City of Kennewick represented by its attorney Kenneth Harper, Menke Jackson
26 Beyer, LLP, and Intervenor Kennewick Industrial District, LLC represented by phone by its
27 attorney Erin Anderson, Stoel Rives LLP.
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³ RCW 36.70A.3201.

⁴ RCW 36.70A.320(2).

1 In the Hearing on the Merits which was centered on Benton County's Resolution No.
2 2014-191 which expanded its UGA, the attorney for the City of Kennewick argued the case,
3 with the concurrence of Benton County and Intervenor Kennewick Industrial District, LLC.
4

5 IV. BOARD JURISDICTION

6 To invoke the Board's jurisdiction to review compliance with the GMA, a party with
7 standing must comply with the statute's procedural requirements:

- 8 a) file a petition for review that includes a detailed statement of issues presented for
9 resolution by the Board;⁵
10
11 b) file the petition for review within 60 days after publication by the legislative body of
12 the county;⁶ and
13
14 c) allege that the government agency is not in compliance with the requirements of
15 the GMA.⁷

16 The Board finds and concludes that the Petitioner has standing and complied with
17 the GMA's procedural requirements to invoke the Board's jurisdiction. The Board has
18 jurisdiction to hear and decide the Comprehensive Plan issues presented for review in this
19 case.
20

21 V. CHALLENGED LEGISLATIVE ACTION

22 Petitioner challenges Benton County's Resolution No. 2014-191, which amended
23 Benton County's Comprehensive Plan Land Use Maps to expand the City of Kennewick's
24 Urban Growth Area (UGA) by 1,263 acres and changed the plan preferred land use for this
25 acreage from "GMA Agricultural" to "Industrial."⁸
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30 ⁵ RCW 36.70A.290(1).

31 ⁶ RCW 36.70A.290(2). In addition to the GMA, the Board also has jurisdiction to hear and determine certain
petitions alleging noncompliance with the Shoreline Management Act and the State Environmental Policy Act.

32 ⁷ RCW 36.70A.280(1)(a).

⁸ Benton County Resolution 2014-191 (March 4, 2014), attached as Tab 31 to Prehearing Brief of City of
Kennewick (filed Sept. 2, 2014).

1 **VI. ISSUES FOR DISCUSSION**

2 The Board typically reviews the issues in the sequence provided in the Petitioner's
3 Issue statements, but this case is centered on RCW 36.70A.1301, which is a new section of
4 the Growth Management Act that has not been reviewed by the Board and the Courts.
5 Therefore, the Board will first consider the County's compliance with Issue #2, adding 1,263
6 acres to the UGA for industrial uses, starting with compliance with section 1301, which the
7 City of Kennewick asserts that the legislature enacted to assist areas east of the Cascades
8 with needed economic development. Then the Board will review the Petitioner's other Issue
9 #2 GMA concerns regarding the addition of 1,263 acres to the UGA for industrial uses.
10 Finally, the Board will consider Issue #1, the de-designation of agricultural lands to
11 accommodate the added UGA area.
12

13 The City of Kennewick attorney argued that Section 1301 of the GMA was specifically
14 enacted to help Benton County and, based on this change, this new section of the GMA has
15 primacy over other sections of the GMA because the Washington State Legislature intended
16 to give this County, and cities within this County, authorization to approve new industrial
17 lands for needed economic development.⁹ At oral argument, Kennewick's attorney
18 acknowledged that the challenged UGA expansion would not meet the traditional UGA
19 sizing requirements as set forth in RCW 36.70A.110, RCW 36.70A.115, and discussed in
20 *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 351 (2008).¹⁰
21

22
23 Petitioner Futurewise argues that all that section 1301 did was to allow Benton
24 County and the cities in the County the right to change their UGA more frequently than the
25 act normally allows, to coincide with the annual Comprehensive Plan amendment process,
26 not to trump other sections of the GMA and allow unlimited UGA growth.
27

28 **Issue 2 – Adding 1,263 Acres to the UGA for Industrial Uses**

29 **Did Benton County's adoption of Resolution No. 2014-191, including expanding**
30 **the Kennewick urban growth area by 1,263 acres and parts of Interstate-82,**
31 **violate RCW 36.70A.020(1) and (2), RCW 36.70A.070 (internal consistency);**
32

⁹ Hearing on the Merits Transcript, pp. 64-65.

¹⁰ Hearing on the Merits Transcript, p. 97.

1 RCW 36.70A.100, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.130, RCW
2 36.70A.1301, RCW 36.70A.210, or Benton County Wide Planning Policies #3, #4,
3 #9, or "Attachment A: Locate Urban Growth Areas."

4 Compliance with the requirements of RCW 36.70A.1301

5 Applicable Law

6 Although the Petitioner cited violations of several sections of the GMA with regard to
7 Issue #2, a key consideration in this case is whether the County complied with a new
8 section of the GMA, section 1301, which Benton County asserts was added by the
9 legislature to assist the County with needed economic growth.

10 RCW 36.70A.1301: Request to amend urban growth area (expires December 31,
11 2015):

12
13 (1) The legislative authority of a city planning under RCW 36.70A.040 may
14 request, as part of the county's annual comprehensive plan amendment
15 process, that the applicable county legislative authority amend the urban
16 growth area within which the city is located.

17 (2) Urban growth area amendment requests under this subsection:
18 (a) May only occur in counties located east of the crest of the Cascade
19 mountain range that have more than one hundred thousand and fewer
20 than two hundred thousand residents;

21 (b) **Must be for the purpose of increasing the amount of territory**
22 **within the amended urban growth area that is zoned for industrial**
23 **purposes and the additional land is needed to meet the city's and**
24 **county's documented needs for additional industrial land to serve**
25 **their planned population growth;**

26 (c) May not increase the amount of territory within the amended urban
27 growth area by an amount exceeding seven percent of the total area
28 within the requesting city. Land area determinations under this subsection
29 (2)(c) must be made on a per occurrence, noncumulative basis;

30 (d) Must be preceded by a completed development proposal and
31 phased master plan for the area to which the amendment applies and a
32 capital facilities plan with identified funding sources to provide the public
facilities and services needed to serve the area; and

(e) Are null and void if the applicable development proposal has not
been wholly or partially implemented within five years of the amendment,

1 or if the area to which the amendment applies has not been annexed
2 within five years of the amendment.

3
4 **Positions of the Parties**

5 The Petitioner asserts that the County violated section 1301 for several reasons. A
6 key problem is that the County did not base its UGA expansion on “. . . the city and county’s
7 documented needs for additional industrial land to serve their population growth.” Instead, it
8 was based on a City decision to designate at least 15% of the City’s land base as industrial
9 land by 2029. Note that this policy is not based on the needs of the planned population
10 increase or even the employment needs of this growth, but instead is based on an arbitrary
11 percentage of the City’s land base, including its existing UGA. So, the error of using the
12 size of the City as the basis for the industrial land projection and its UGA base results in an
13 overstated need for additional industrial land.

14
15 The Petitioner asserts that there is no evidence in the record documenting either a
16 city- or county-wide need for additional industrial land. There are substantial unused
17 industrial lands around the County and even in the City of Kennewick that could meet the
18 needs for additional industrial lands. Petitioner asserts that as an alternative way of
19 meeting the need, the City could have changed the designation of vacant and unneeded
20 residential and commercial lands that already are in the City and in excess of its needs.

21
22 The Petitioner states that the City also did not comply with section 1301 because it
23 failed to file a completed development proposal limited to industrial purposes that complies
24 with the Benton County Code. As part of that proposal, no company has been identified
25 that would use the designated land which indicates that this UGA expansion is speculative.
26 Also, the City of Kennewick states that the uses in the planned area will include such uses
27 as laboratory, office, light industrial and manufacturing, data center, technology incubator
28 space and federal government use, many of which are not industrial uses and can be
29 accommodated in existing vacant and underused commercial lands. The Petitioner asserts
30 that the City has not adequately planned for needed public facilities to serve the new area.
31
32

1 The Petitioner contends that RCW 36.70A.1301 only provided a more convenient
2 time window for UGA additions, but did not change any of the other terms and conditions of
3 the GMA.

4 The City of Kennewick asserts that section 1301 was added to the GMA by the
5 legislature to specifically allow Benton County and the cities within the County to expand
6 their industrial lands to provide for needed economic growth and did not provide for strict
7 requirements on the manner in which the lands are designated. The City of Kennewick
8 admits in both its brief and its oral argument at the Hearing on the Merits that the addition of
9 1,263 acres of land to the UGA is not related to its planned population growth, but argues
10 that the reference to **planned population growth** in section 1301 cannot be compared to
11 how the term is used in other sections of the GMA. The City asserts that it conducted
12 studies of the availability of industrial lands in the County and in the City and decided that
13 this UGA addition was best situated to meet the City's industrial needs. The City states that
14 it has met the County's standards for a proper development proposal. The City explained
15 that it would not allow non-industrial uses in the new industrial area but that would be
16 controlled by its permitting requirements, which have yet to be developed. Also, it asserts it
17 has adequately planned for needed infrastructure for the expanded UGA area and
18 submitted the required development proposal and phased master plan for the amended
19 area.
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23 In general, the City of Kennewick contends that since section 1301 was aimed at
24 helping Benton County provide for additional industrial lands for economic development, the
25 Board should allow for a broad interpretation of the applicable sections of the Growth
26 Management Act that apply to the new UGA addition that provides for additional industrial
27 lands in the City of Kennewick.
28

29 **Board Analysis and Findings**

30 Section 1301 of the GMA was added to the Act based on Substitute Senate Bill 5995,
31 which has an effective date of June 7, 2012.¹¹ Part (1) of this bill changed the time frame for
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¹¹ IR 548, Substitute Senate Bill 5995.

1 allowing more frequent revisions to the UGA for certain cities east of the crest of the
2 Cascade mountain range that meet very specific requirements as noted above. The Board
3 notes that none of the references to this bill that the parties provided changed the language
4 in other parts of the GMA, nor did section 1301 reference a new definition of the terms in
5 this section that are similar to other parts of the act, such as “planned population growth.”
6

7 The parties agree that this UGA addition does meet the requirements in parts (2) (a)
8 and (c) of section 1301, in that Benton County currently has a population between one
9 hundred and two hundred thousand, and the 1,263 acres does not exceed seven percent of
10 the total area within the City of Kennewick.

11
12 **Part (2)(b)**

13 With regard to part (2)(b) of section 1301, this addition to its UGA is not based on
14 land needed to serve its planned population growth, but on a change in the amount of land
15 the City wants to have designated for industrial purposes. The City Council approved this
16 land use addition based on a City Comprehensive Plan Industrial Policy that calls for an
17 increase in the total percentage of its industrial lands to 15% of its total lands.¹²
18

19 The Board notes that prior to this UGA change, Kennewick had only developed 5,382
20 acres (45% of its total urban land). Of this total, it had developed only 3,086 acres of its
21 residential lands (31%), and 333 acres of its commercial lands (17%). It had developed 353
22 acres (57%) of its industrial lands, leaving only 270 undeveloped acres, but rather than
23 reallocating its existing inventory of vacant and undeveloped residential and commercial
24 lands to industrial use, the City decided to add more lands to its UGA by increasing the
25 industrial acres and total acres needed per capita.¹³
26

27 Based on this decision, the City revised the number of industrial acres per capita
28 desired from .0083 acres per person to .1433 acres per person, a 17-fold increase.¹⁴ The
29 City explained that it did this because the previous amount of industrial acreage estimated
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32 ¹² IR 387, City of Kennewick Land Quality Analysis, Supplemental Information, p. 2.

¹³ Calculations based on IR 535, City of Kennewick UGA Inventory Spreadsheet, p.2, Table 1, part of the Nov.
27, 2012 application for the UGA amendment.

¹⁴ *Id.*, p.3, Table 2.

1 per person for the City was quite low compared to other Washington cities. The County
2 notes, however, that this increase is far beyond the amount allocated for other cities similar
3 in size to Kennewick.¹⁵ The Board notes that even with its significant underutilization of
4 existing lands, the City decided to change the amount of industrial land needed for its
5 population growth from 0 additional lands to 3,158 acres.¹⁶

6
7 In the City's UGA Inventory Spreadsheet which it filed with its UGA expansion
8 application, the City showed a pre-application total population of 78,504, with a projected
9 population growth for the next 20 years of 23,924 persons, a 31% growth (a 1/3 increase in
10 population compared to a 17-fold increase in its industrial lands). In these spreadsheets,
11 the City showed that it had 623 acres of designated industrial lands, but had 43% of this
12 land or 270 acres of industrial land still vacant or under developed. The City then applied its
13 new industrial land use factor to its projected population growth and determined that it would
14 need 3,158 additional acres of industrial land for its population growth. So, prior to this UGA
15 addition, the City had used only 353 acres of its industrially designated lands for 78,504
16 people but it calculated that it now needs an additional 3,428 acres for a population increase
17 of 23,924 (a 31% increase in population, but over a 5-fold increase in its designated
18 industrial lands).¹⁷

19
20 Although the Petitioner argues that the City could more easily re-designate part of the
21 vacant and underdeveloped residential and commercial lands that are already in the City's
22 reported inventory of designated lands, the City reported that it has considered the
23 availability of adequate industrial, commercial and residential lands in a supplemental study
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29 ¹⁵ IR 460, Benton County Planning Department memo to the Benton County Planning Commission, dated July
30 1, 2013, p. 5. The Planning Department notes that similar sized cities had a much lower factor, including
31 Marysville at .0240, Auburn at .0407 and Spokane Valley at .0087.

32 ¹⁶ IR 535. Using the information in the City's land use application, the Board notes that even with a planned
population growth of 23,924, the city had adequate vacant industrial lands. The change in the land use factor
from .0083 acres to .1143 acres results in a calculated need for an additional 3,158 acres, about a 9-fold
increase over the existing 353 acres of developed industrial land currently in the city.

¹⁷ The Board calculated the percentages using the information on the City of Kennewick's UGA Inventory
Spreadsheet used in its November 27, 2012 UGA amendment application form, IR 535, pp,1-3.

1 done to answer several issues the County Planning Department had with the City's Land
2 Quality Analysis.¹⁸

3 Benton County's Planning Department had several concerns with the City's
4 application for its UGA expansion:¹⁹

- 5 1. County staff indicates in the staff report that the City of Kennewick has sufficient
6 land within its existing urban growth boundary to accommodate twenty years of
7 growth and beyond.
- 8 2. County staff points out that over the course of the last several years, the City's
9 residential densities have steadily declined.
- 10 3. The City's application proposal did not provide an analysis regarding the potential
11 for infill within the existing UGA, or if a rezone of the existing UGA was considered
12 by the City.
- 13 4. No analysis was provided by the City of Kennewick to demonstrate why an
14 increase to the Kennewick UGA is needed for industrial purposes, nor was there a
15 discussion provided to substantiate the inflation of the per capita industrial
16 calculation to help determine the appropriateness.
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20 The City responded to the County Planning Department's concerns by submitting
21 supplemental information on August 23, 2013.²⁰ In this supplemental report, the City
22 reported that the largest area of available industrial land is 17 acres and that the available
23 undeveloped commercial and residential areas are not well suited for re-designation as
24 industrial lands. This supplemental information explained that the city of Kennewick's non-
25 residential land base is heavily weighted in commercial properties, such as big box
26 commercial stores and these commercial properties do not provide many family-wage jobs.
27 As a result, the City Council adopted a comprehensive plan goal to increase the city's
28 industrially-zoned land to 15% of the total city land.²¹ The Board noted, however, that other
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31 ¹⁸ IR 387, City of Kennewick Land Quality Analysis, Supplemental Information, pp.1-7.

32 ¹⁹ IR 460, Benton County Planning Department memo to the Benton County Planning Commission, dated July
1, 2013, p. 10.

²⁰ IR 387, City of Kennewick Land Quality Analysis, Supplemental Information, p.1.

²¹ *Id.* pp.2-6.

1 than generalized comments about the benefits of additional industrial lands, and comments
2 about having to turn away potential industrial users, none of the exhibits provided by the
3 City or the County substantially explain how this need correlates with the City's planned 20-
4 year population growth through 2034, or is supported by any special City, County, or State
5 studies of the need to increase the City's industrial lands to meet the City's planned
6 population growth.
7

8 In comments to the Benton County Board of County Commissioners in a January 4,
9 2014 hearing on this Urban Growth Area change application, a Washington State
10 Department of Commerce Growth Services official recommended the County review the
11 absorption rate of past industrial developments to show a realistic rate of demand for future
12 industry that was based **on per capita needs** rather than speculative assumptions on future
13 demand.²²

14 The Washington State Supreme Court has noted, "(o)versized UGAs are perhaps the
15 most egregious affront to the fundamental GMA policy against urban sprawl, and it is this
16 policy that the UGA requirements, more than any other substantive GMA mandate, are
17 intended to further."²³ According to the court, OFM population projections create a cap on
18 UGA expansion.²⁴ RCW 36.70A.110(2) and .115 specify that UGA expansions to provide for
19 employment growth and institutional or commercial uses are to be based on serving the
20 planned population growth. RCW 36.70A.1301 reiterates this requirement.
21
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23 The Board finds and concludes that there is substantial evidence in the record to
24 indicate that amending the UGA to add 1,263 new industrial acres does not comply with the
25 requirements of part 2(b) of Section 1301. Petitioner has satisfied its burden of proof to
26 show that this UGA addition is not based on the "city's and county's documented needs for
27 additional industrial land to serve their planned population growth."
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30 ²² IR 129, Comments before the BCC in a January 7, 2014 hearing on the UGA amendment, pp.4 & 5.

31 ²³ *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 352, n.13,
32 190 P.3d at 49 (2008), n. 13, quoting Brent D. Lloyd, *Accommodating Growth or Enabling Sprawl? The Role
of Population Growth Projections in Comprehensive Planning under the Washington State Growth
Management Act*, 36 Gonz. L. Rev. 73, 105 (2001).

²⁴ *Id.*

1 **Part (2)(d)**

2 With regard to part (2)(d) of section 1301, the Petitioner alleges that the City did not
3 complete a development proposal that meets Benton County Code requirements for a
4 proposal that includes such information as : 1) A narrative describing planned
5 improvements, including anticipated gross floor area by occupancy or use, or 2) A transit
6 oriented site plan and traffic demand management program. In addition, Petitioner asserts
7 that because no company has been identified that would use the land, and the floor area to
8 be used for various uses and occupancies has not been provided, this entire UGA
9 expansion is speculative.
10

11 The City of Kennewick argues that it prepared a development proposal and capital
12 facilities analysis for the UGA extension area and these documents were accepted and
13 approved by the County, thereby meeting County and GMA requirements for Section 1301
14 of the act. The City added that the County, therefore, did not have to conduct a separate
15 land use analysis.²⁵
16

17 The County's Planning staff reported to the Benton County Planning Commission that
18 in accordance with RCW 36.70A.1302(d), a UGA expansion application must be preceded
19 by a completed development proposal and phased master plan for the area to which the
20 amendment applies and a capital facilities plan with identified funding sources to provide the
21 public facilities and services needed to serve the area.²⁶ The staff report states that:
22

23 Although the City prepared a "development proposal," and "master plan"
24 map, a completed development proposal or phased master plan submitted to
25 the city from **a developer/property owner** that included the requirements set
26 forth in BCC 16.14.060(d) was not included in the City of Kennewick's UGA
expansion application.²⁷

27 The staff also reported that the included Capital Facilities Analysis was not adequate,
28 and did not identify funding sources as required by RCW 36.70A.1301. The power and
29 roads to serve the proposed expansion site, their locations, and costs were not provided.
30

31 _____
32 ²⁵ Transcript of the Hearing on the Merits, held September 18, 2014, pp.102-104.

²⁶ IR 460, Memo from Benton Co. Planning Dept. to the Benton County Planning Commission, dated July 1,
2013, p.9.

²⁷ *Id.* p. 17.

1 The CFA does not contain a six-year plan to finance the capital facilities required nor does it
2 identify sources of public money that will fund the facilities and what the actual costs are,
3 and specifically what the developer(s) will be paying for.²⁸

4 Minutes of the Benton County Board of Commissioners discussion preceding its vote
5 to approve the City of Kennewick UGA proposal clearly indicate that approval of this UGA
6 addition was not based on agreements with any industrial companies or end users.²⁹ In the
7 meeting, the City of Kennewick presented a power point presentation that emphasized the
8 qualities of the site selected, with no mention of committed end users.³⁰ The minutes did
9 not include any record of actual industrial user agreements to develop as indicated by this
10 comment, "It was stated the City had preliminary conversations with future purchasers and if
11 approved, they would proceed to actively pursue development."³¹ In this meeting, a
12 representative from the Department of Commerce urged caution about speculative
13 development and presented how the state could help if actual commitments were made,
14 and strongly recommended that the County not approve additional industrial lands.³²

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16
17 On August 23, 2013, the City of Kennewick submitted supplemental information to
18 answer the Benton County Planning Department's statements that the City's original
19 application did not meet the County's and GMA requirements, including a land use analysis
20 and a capital facilities analysis.³³ The supplemental Land Use Analysis emphasized the
21 unique qualities that this site would provide but the Board notes that it did not cite how the
22 additional information provided satisfied the County's requirement for a completed
23 development proposal.³⁴

24
25 Intervenor Kennewick Industrial District, LLC, contends that Benton County accepted
26 the application for UGA expansion as complete. They contend that they submitted a
27 "narrative describing planned improvements including maximum site coverage, anticipated
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²⁸ *Id.*, p.21.

²⁹ IR 129, January 7. 2014 Minutes of the Board of Benton County Commissioners, pp. 2-7.

³⁰ *Id.*, p.3.

³¹ *Id.*

³² *Id.*, p.5.

³³ IR 387, City of Kennewick Land Quality Analysis, Supplemental Information, pp.1-7.

³⁴ *Id.*

1 gross floor area by occupancy or use, proposed building heights, and the nature and intent
2 of off-site improvements” as required by the County. They assert that until zoning
3 ordinances and development standards are adopted and applied to the subject property, the
4 description provided in the application cannot be known with greater specificity.³⁵

5 At the Hearing on the Merits, the Kennewick Industrial District attorney argued that
6 under County Code 1614.060, Benton County is the finer arbiter of what is a complete
7 application. She stated that this was a land use planning application, not a development
8 permit application.³⁶ The Board interprets this comment as meaning that the amount of
9 specificity required for this application was less than normally required for a development
10 proposal. The Board notes that the law, however, refers to a development proposal, not a
11 land use planning application.
12

13 The City of Kennewick submitted a Capital Facility Analysis- Supplemental
14 Information sheet to respond to several problems noted by the County’s Planning
15 Department with the City’s application.³⁷ The City explained that for GMA facility
16 concurrency, streets and roads, water, and sewer facilities were the Category 1 facilities
17 which required concurrency and provided a list of the facilities needed, the costs needed
18 and the sources of funding for the projects.³⁸ Regarding power, the City reported that it was
19 one of a number of non-city owned facilities which have no levels of service associated with
20 them but which the City will work with to provide services when growth occurs.³⁹ The Board
21 notes that the record does not contain any references to subsequent Benton Planning
22 Department review of this supplemental information regarding the adequacy of the capital
23 facility information provided by the City of Kennewick or whether this information corrected
24 the problems the Planning Department noted with regard to the City’s development
25 proposal.
26
27
28
29
30

31 ³⁵ Intervenor, Kennewick Industrial District LLC’s Prehearing Brief, p.3.

32 ³⁶ Transcript of the Hearing on the Merits, held September 18, 2014, pp. 86-87.

³⁷ IR 387, City of Kennewick Capital Facility Analysis-Supplemental Information, dated August 23, 2013.

³⁸ *Id.*, pp. 1-2.

³⁹ *Id.*, p. 6.

1 The Board notes that the Development Proposal and phased master plan submitted
2 by the City to the County both appear very limited,⁴⁰ and as noted above are not based on
3 end user agreements and are incomplete. Petitioner did carry its burden of proof that the
4 City did not submit a valid development proposal, and in approving this UGA application the
5 County did not comply with part (2)(d) of section 1301 .

6
7 In summary, although the Petitioner has not proved violation of parts (2)(a), (c) of
8 section 1301, the Petitioner carried its burden of proof that Benton County's action in
9 approving Resolution 2014-191 and adding 1,263 acres of industrial lands to the UGA
10 violated RCW 36.70A.1301(2)(b),and(2)(d) of the GMA.

11 Upon remand, the City and County should document whether the additional industrial
12 land in the City's UGA amendment is needed to serve the City's planned population growth
13 and submit a complete development proposal.
14

15 **Compliance With Other Provisions of the Act Regarding Issue #2**

16 **Applicable Law**

17
18 RCW 36.70A.020 provides in pertinent part as follows:

19 The following goals are adopted to guide the development and adoption of
20 comprehensive plans and development regulations of those counties and
21 cities that are required or choose to plan under RCW 36.70A.040. The
22 following goals are not listed in order of priority and shall be used exclusively
23 for the purpose of guiding the development of comprehensive plans and
24 development regulations:

25 (1) Urban growth. Encourage development in urban areas where
26 adequate public facilities and services exist or can be provided in an efficient
27 manner.

28 (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped
29 land into sprawling, low-density development.

30 RCW 36.70A.070 provides in pertinent part as follows:

31 The comprehensive plan of a county or city that is required or chooses to
32 plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive
text covering objectives, principles, and standards used to develop the

⁴⁰ IR 536, The City of Kennewick's Development Proposal, and IR 537, the City's Phased Master Plan.

1 comprehensive plan. The plan shall be an internally consistent document and
2 all elements shall be consistent with the future land use map.

3 RCW 36.70A.100 provides that the comprehensive plan of each county or city shall
4 be coordinated with, and consistent with, the comprehensive plans of other counties or cities
5 with which the county or city has, in part, common borders or related regional issues.
6

7 RCW 36.70A.110 provides in pertinent part that each county that is required or
8 chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas
9 within which urban growth shall be encouraged and outside of which growth can occur only
10 if it is not urban in nature and that area **shall be based upon the growth management**
11 **population projection made for the county by the office of financial management.**
12

13 Also, urban growth should be located first in areas already characterized by urban
14 growth that have existing public facility and service capacities, second in areas already
15 characterized by urban growth that will be served by a combination of existing public
16 facilities and services provided by public and private resources, and third in the remaining
17 portions of the urban growth areas.

18 RCW 36.70A.115 provides in pertinent part as follows:
19

20 Counties and cities that are required or choose to plan under RCW
21 36.70A.040 shall ensure that, taken collectively, adoption of and
22 amendments to their comprehensive plans and/or development regulations
23 provide sufficient capacity of land suitable for development within their
24 jurisdictions to accommodate their allocated housing and employment
25 growth, including the accommodation of, as appropriate, the medical,
26 governmental, educational, institutional, commercial, and industrial facilities
27 related to such growth, as adopted in the applicable countywide planning
28 policies and **consistent with the twenty-year population forecast from**
29 **the office of financial management.**

30 RCW 36.70A.130(1)(d) provides that any amendment of or revision to a
31 comprehensive land use plan shall be consistent with and implement the comprehensive
32 plan.

RCW 36.70A.210(1) provides that counties shall adopt county-wide planning policies
and cities and county planning policies shall be consistent as required by RCW 36.70A.100.

1 Benton County's County Wide Planning Policies provide in pertinent part as follows:

2 #3 The locating of urban growth areas within the county shall be
3 accomplished through the use of accepted planning practices which provide
4 sufficient land and service capacities to meet **projected populations** at
5 urban densities and service standards within the cities

6 #4 The urban growth areas of each **city shall be based upon official**
7 **population projections for minimum 20 year periods.**

8 a. The jurisdictions within the county shall use a uniform formula for
9 identifying the land area necessary per capita for each community. Each
10 jurisdiction's population projection shall be multiplied by its gross per
11 capita land area requirement, which in the aggregate will define total land
12 needs within the Urban Growth Area (UGA).⁴¹

13 #9. The appropriate directions for the expansion of urban growth areas are
14 those which are unincorporated lands substantially engrossed by urban
15 development; areas with existing service infrastructure; lands adjacent to
16 corporate limits and confined on the other side by major features such as
17 highways; and existing rural residential development characterized by
18 compromised agricultural productivity; average lot sizes less than 10 acres;
19 and existing streets and utility services.

19 **Positions of the Parties**

20 Petitioner alleges that this addition of 1,263 acres of land to the City of Kennewick's
21 UGA violates several sections of the GMA in addition to section 1301 and is inconsistent
22 with Benton County Wide Planning Policies, resulting in urban sprawl. In particular, the
23 industrial uses could be accommodated in vacant and under-developed residential and
24 commercial lands, on lands already in Kennewick's UGA, on rural lands adjacent to vacant
25 industrial land or even in the thousands of square feet of existing industrial lands in the
26 county. In addition, the land selected has characteristics that disqualify it for selection,
27 thereby violating Benton County Wide Planning Policies and the GMA.

28 In oral argument before the Board, the Attorney for the City of Kennewick
29 acknowledged that this UGA amendment was not done consistently with the requirements
30
31

32 _____
⁴¹ IR 550. Note that this includes a factor that represents the industrial/manufacturing area per capita, Benton County Wide Planning Policies, Appendix 42.

1 of RCW 36.70A.110 or RCW 36.70A.115 of the GMA regarding a needed link to population
2 projections,⁴² but argued that the area selected for UGA expansion has unique
3 characteristics that can serve the critical Kennewick and Benton County needs for additional
4 industrial land. In particular, the City contends the lands selected are in a large enough
5 block size to meet the city and county needs for large sized industrial parcels.⁴³
6

7 **Board Analysis**

8 With regard to a violation of RCW 36.70A.070, Petitioner asserts that the UGA
9 expansion is internally inconsistent with the County's comprehensive plan because the
10 comprehensive plan contains no designation for the land use "industrial." Intervenor City of
11 Kennewick notes that although the County uses "light" industrial and "heavy" industrial
12 designations, it is clear that the intention of the City was linked to light industrial and not a
13 significant difference. The Board agrees that this is not a significant difference and,
14 therefore, not a violation of RCW 36.70A.070.
15

16 The Petitioner briefed the Board on RCW 36.70A.020(2), RCW 36.70A.110,
17 RCW.36.70A.115, RCW 36.70A.130, including Benton County Wide Planning Policies 3, 4,
18 and 9, and these sections of the law are considered in the following Board analysis.
19

20 The UGA sizing standard requires the County to designate no more than the amount
21 of land necessary to accommodate the 20-year urban growth projection, plus a reasonable
22 land market supply factor.⁴⁴ Once a petitioner challenges a county's UGA designation, the
23 county must "show its work" to analyze and compute the appropriate amount of UGA
24 acreage.⁴⁵ Consistent with the OFM 20-year population forecast, the "projected urban
25 growth" must include residential uses together with a broad range of non-residential needs
26 and uses (e.g. commercial, industrial, service, and retail) in accordance with RCW
27 36.70A.110(2) and .115.
28
29
30

31 _____
32 ⁴² Transcript of the Hearing on the Merits, held September 18, 2014, p. 97.

⁴³ *Id.*, pp. 93-96.

⁴⁴ *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 352 (2008).

⁴⁵ *Id.*

1 Typically, the appropriate size of a UGA is determined by preparing a “land capacity
2 analysis” or a “land quantity analysis.”⁴⁶ That analysis determines how much land should be
3 included within a UGA to accommodate expected urban development, based on the OFM
4 population projections. Thus, the land capacity analysis seeks to balance the supply of
5 developable land with the demand for such land over the 20-year planning horizon.

6 The Board has previously noted Benton County’s Planning Department’s concerns
7 with the City’s application for its UGA expansion. Along with other concerns, the staff
8 review states the following:
9

10 (d) No analysis was provided by the City of Kennewick to demonstrate why
11 an increase to the Kennewick UGA is needed for industrial purposes, nor
12 was there a discussion provided to substantiate the inflation of the per
13 capita industrial calculation to help determine the appropriateness.⁴⁷

14 The City’s response explained that the city of Kennewick’s non-residential land base
15 is heavily weighted in commercial properties, such as big box commercial stores and these
16 commercial properties do not provide many family-wage jobs. As a result, the City Council
17 adopted a comprehensive plan goal to increase the city’s industrially zoned land to 15% of
18 the total city land. The Board finds none of the exhibits provided by the City or the County
19 substantially explain how this 15% target for industrial area correlates with the City’s
20 planned 20-year population growth through 2034, or is supported by any special City,
21 County or State studies of the need to increase the City’s industrial lands to meet the City’s
22 planned population growth.⁴⁸

23 The City supported its actions in supplemental information and staff comments
24 regarding its Land Quality Analysis, which concluded the following:
25

26 In conclusion, the City’s opinion is that this is an opportunity to bring into the
27 UGA land that would be unique industrial land in the region. The subject
28 property has excellent access to I-82, which provides transportation
29 connection in all directions . . . Attached is a letter . . . that expresses . . .
30

31 ⁴⁶ *Kittitas Co. Conservation v. Kittitas Co.*, EWGMHB Case No. 07-1-0004c, FDO, p. 65 (Aug. 20, 2007).

32 ⁴⁷ IR 460, Memo from Benton Co. Planning Dept. to the Benton County Planning Commission, dated July 1,
2013, p.10.

⁴⁸ IR 387, City of Kennewick Land Quality Analysis, Supplemental Information, pp. 1-7.

1 support for expanding the UGA for industrial purposes and how the subject
2 property is unlike any other industrially zoned land in the region.⁴⁹

3 A letter from TRIDEC, The Tri-City Development Council, cited in support of the
4 expansion of Kennewick's UGA notes that there are other available industrial lands in other
5 Benton County cities but that these lands are not near large highways, one is only about
6 100 acres and one is a 400+ acre site but best suited to "heavy" industrial uses. The letter
7 suggests two industries that should be targeted for recruitment as a large warehousing and
8 distribution site of approximately 250 acres and data centers that, although not so
9 dependent on interstate access and visibility, would need a larger footprint. "Again, the
10 1,000+ acres added to the Kennewick UGA would be ideal for these kinds of
11 development."⁵⁰ The letter explained the importance of this land to economic development
12 by stating the following: "A community needs a variety of available sites for the same reason
13 an auto dealer doesn't have one make or model in the showroom or an appliance store
14 doesn't sell one size of brand of refrigerator. Companies like consumers expect the product
15 to be available and are not willing to delay their process while based on the loose promise
16 someone can deliver."⁵¹

17 Although the Board agrees that good planning is needed so that local communities
18 can be prepared to provide adequate lands for industrial development, the above letter
19 indicates that the land is being included in the UGA based on speculation, rather than being
20 based on firm development commitments. In addition, as alleged by the Petitioner, the
21 Board notes that the Development Proposal⁵² and Phased Master Plan⁵³ used by the City to
22 meet County requirements for its UGA amendment, are for a speculative development
23 proposal, with no firm commitments from industrial users. In its argument, the City points out
24 that if this land is not developed in five years, the legislative authority for this UGA addition
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31 ⁴⁹ *Id.*, p.6.

32 ⁵⁰ *Id.*, TRIDEC letter to the City of Kennewick, dated August 1, 2013, p.1.

⁵¹ *Id.*, p.2.

⁵² IR 536, South Kennewick Development Proposal.

⁵³ IR 537, South Kennewick Development Proposal, Phased Master Plan.

1 may be revoked.⁵⁴ The Board notes that although this is a potential safety valve if the land is
2 not even partially developed, it is unlikely that a partially developed agricultural area can be
3 returned to agricultural use and it indicates that the demand for industrial use of this land is
4 speculative, rather than being based on actual commitments.

5 In comments to the Benton County Board of County Commissioners in a January 4,
6 2014 hearing on this Urban Growth Area change application, a Washington State
7 Department of Commerce Growth Services official cited the following concerns about this
8 proposed UGA addition for industrial reasons:⁵⁵
9

10 He said they understood there were approximately 18,000 acres of industrial
11 land in Benton County. The interest of siting new industry might be better
12 served by investing time and resources in industrial land that was currently
13 on the market rather than risking saturating the market with more vacant
14 industrial land. He recommended the County review the absorption rate of
15 past industrial developments to show a realistic rate of demand for future
16 industry that was based on per capita needs rather than speculative
17 assumptions on future demand.

18 He said there were provisions in State law that would allow the County and
19 its cities to site an industrial development outside of an urban growth area if
20 no land was currently available inside it. There were safety valves in the
21 State law that would accommodate a large industrial user should they
22 receive a commitment from somebody and could not find a place for them
23 and Commerce would assist in that. Additionally, he said it was important to
24 keep in mind that sprawling urban growth areas were costly to the State and
25 others.

26 In his oral argument at the Hearing on the Merits, the City's Attorney emphasized that
27 **large-sized industrial parcels** are needed for economic growth and that **this industrial**
28 **land should be strictly limited to industrial use and protected over time**, similar to
29 natural resource lands.⁵⁶ When asked about whether this new UGA parcel might be used
30 for commercial uses, he stated that strict City permitting requirements would limit the use of
31 this land to only industrial uses.⁵⁷

32 ⁵⁴ Transcript of the Hearing on the Merits, held September 18, 2014, p.74.

⁵⁵ IR 129, Comments before the BCC in a January 7, 2014 hearing on the UGA amendment, pp.4 & 5.

⁵⁶ Transcript of the Hearing on the Merits, held September 18, 2014, p.58.

⁵⁷ *Id.*, pp.90-91.

1 Testimony before the Benton County Commissioners cited that potential businesses
2 interested in the site selected for this UGA expansion would include such large industrial
3 users as warehouse distribution centers, food processing and heavy electricity use data
4 processing centers.⁵⁸

5 The Board notes that the City cites the unique qualities that the UGA expansion site
6 provides to meet the City's needs for additional industrial lands, with particular emphasis on
7 the need for large-sized parcels to meet current unmet industrial demands. However, there
8 is no restriction limiting uses on the site to clearly industrial uses or limiting users to large
9 size parcel use. The master plan narrative for this parcel states that the site would be
10 limited by future zoning district standards, which were anticipated to include categories of
11 uses such as laboratory, research and development, office, light industrial/manufacturing,
12 data center, and technology incubator space.⁵⁹ Other argument refers to potential use of
13 this site for call centers, Department of Energy Contractors, medical research companies,
14 biotech and flex buildings.⁶⁰

15 In its argument, Petitioner notes that in the context of RCW 36.70A.1301(2)(b) the
16 most applicable definition of industrial is "one that is employed in the manufacturing
17 industry."⁶¹ Petitioner asserts that offices, call centers, and governmental agencies do not
18 fit this definition of industrial.⁶² In addition, the site plan shows that it will be cut into parcels
19 as small as one acre, rather than limited to large size industrial parcels.⁶³ The Board notes
20 that without clear restrictions on the parcel size or category of use, this UGA addition will
21 compete with existing Kennewick commercial lands and would likely add to under-utilized
22 UGA lands and city sprawl. The Board notes Petitioner has identified several parcels of
23 industrial lands in Benton County that might serve to meet any County-wide need for
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29

30 ⁵⁸ IR 129, Benton County Board of County Commissioner's meeting of January 5, 2014, p.6.

31 ⁵⁹ IR 537, City of Kennewick Master Plan Narrative, Attachment 1.

32 ⁶⁰ IR 91, City of Kennewick Community Planning Dept. Industrial Analysis, dated 2/11/2014.

⁶¹ Webster's Third International Dictionary, p. 1155 (2002).

⁶² Petitioner's Prehearing Brief, p. 28.

⁶³ IR 285, Research of Lands designated as industrial in Benton County and the Region.

1 additional industrial lands, citing a county study that shows 22,150 acres in the region and
2 12,921 acres in Benton County only.⁶⁴

3 The Benton County Planning Department's analysis of the amendment to
4 Kennewick's UGA concluded it does not comply with Benton County Planning Policy #9,
5 which implements the requirements of RCW 36.70A.130.⁶⁵ Policy #9 provides:

6 #9. The appropriate directions for the expansion of urban growth areas are
7 those which are unincorporated lands substantially engrossed by urban
8 development; areas with existing service infrastructure; lands adjacent to
9 corporate limits and confined on the other side by major features such as
10 highways; and existing rural residential development characterized by
11 compromised agricultural productivity; average lot sizes less than 10 acres;
12 and existing streets and utility services.

13 The County planners stated⁶⁶

- 14 1. The site is not substantially engrossed by urban development. The
15 proposed UGA site is under agricultural use and currently enrolled in the
16 Voluntary Conservation Reserve Program. The site is devoid of any
17 urban development.
- 18 2. The proposed area doesn't have public facilities available, nor is it
19 adjacent to existing service infrastructure.
- 20 3. The proposed area is separated from the City by I-82 to the north and SR
21 395 to the east. The City's proposal leaps over vacant lands within the
22 city limits.
- 23 4. The site is devoid of any urban or rural development, and fully engulfed in
24 agricultural activity only.
- 25 5. The average lot size is greatly in excess of 10 acres, at an average of
26 260 acres per parcel.
- 27 6. There are no existing streets or water or sewer services within the
28 proposed area.

29 In addition, the Planning Department noted that the Phased Master Plan submitted with the
30 proposal did not include a required list of development regulations that are established to
31 ensure that urban growth will not occur in adjacent nonurban areas.⁶⁷

32 ⁶⁴ IR 91, City of Kennewick Community Planning Dept. Industrial Analysis, dated 2/11/2014, Attachment D.

⁶⁵ RCW 36.70A.130(3).

⁶⁶ IR 460, Benton County Planning Department memo to the Benton County Planning Commission, dated July
1, 2013, pp.14-15.

⁶⁷ *Id.*, p.23.

1 The Board finds the County staff analysis persuasive: the UGA expansion does not
2 comply with the criteria in Benton County Wide Planning Policy #9. A county's duty to act in
3 accordance with its Countywide Planning Policies (CPPs) is well-established. In *King*
4 *County v. Central Puget Sound GMHB*,⁶⁸ the State Supreme Court addressed the question
5 "whether the directive provisions of CPPs must be binding in order to fulfill their purpose
6 under the GMA." Basing its holding on RCW 36.70A.100 and .210(1), the Court ruled that
7 CPPs are binding on a county.⁶⁹ The Board finds the County's action contravenes Benton
8 County Wide Planning Policy #9 in violation of the statute.
9

10 With regard to compliance with planning goal RCW 36.70A.020(2), reducing the
11 inappropriate conversion of underdeveloped land into sprawling low-density development,
12 the Benton County Planning Department stated that the UGA area does not comply with this
13 goal: "The proposal is an inappropriate conversion of underdeveloped and agriculturally
14 designated land. The proposal leaps over vacant land within the existing city limits that are
15 available for development."⁷⁰ The Board concurs, and finds the County's action was not
16 guided by this GMA planning goal which is aimed at reducing sprawl.
17

18 The City contends that lands to the north of the selected UGA site in the Southridge
19 Subarea Plan, which are north of I-82, are not desirable for industrial development because
20 of topography and developing land use patterns.⁷¹ However, the Board notes a City of
21 Kennewick topographical map included with the South Kennewick Development Proposal
22 shows large parcels of undeveloped acreage in this area that appear to be similar to the
23 land in the selected area.⁷²
24

25 In a study of County-wide industrial lands, the City of Kennewick identified large
26 parcels of vacant industrial land in the County that could meet a key need for a large server
27 farm site but stated that this land wasn't available because the owners did not want to use
28

29 ⁶⁸ *King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn.2d 161, 175-76, 979
P.2d 380 (1999).

30 ⁶⁹ See, e.g., *Friends of King County v. Pierce County*, GMHB Case No. 12-3-0002c, Final Decision and Order
31 (July 9, 2011), at 58-60, 119-20, 122.

32 ⁷⁰ IR 460, Benton County Planning Department memo to the Benton County Planning Commission, dated July
1, 2013, pp.14-15.

⁷¹ IR 387, Kennewick UGA Application, Land Quality Analysis-Supplemental Information, p.4.

⁷² IR 536, South Kennewick Development Proposal, Attachment 3.

1 their land for this purpose.⁷³ The Board believes that this lack of current interest in meeting
2 the potential demand for space does not justify the addition of more land to the County's
3 inventory of available industrial lands. It is not based on planned population growth,
4 appears speculative, and given the City of Kennewick's sizable areas of vacant and under-
5 developed residential, commercial, and industrial lands, will likely result in additional
6 developmental sprawl. As noted on page 22, the Department of Commerce indicates there
7 are other ways to accommodate firm development proposals than increasing the size of the
8 City of Kennewick's UGA to accommodate speculative development.
9

10 The Board has ruled on several cases in which expansion of a UGA that has
11 significant excess capacity may, on the specific facts of the case, be found clearly
12 erroneous. Thus in *Kittitas County Conservation v. Kittitas County*,⁷⁴ the Eastern Board
13 found a proposed commercial extension of the UGA to link to the interstate and
14 accommodate big-box stores was not supported in the record, where ample vacant
15 commercial land was already available in the UGA. In *Brodeur v. Benton County*,⁷⁵ the
16 Eastern Board found no support in the record that additional commercial land was needed
17 for a proposed commercial/retail UGA extension that would link the City of West Richland to
18 a potential freeway interchange when the existing UGA contained hundreds of acres of
19 vacant and under-developed land. In *North Clover Creek v. Pierce County*,⁷⁶ the Central
20 Board found a net 50-acre expansion of the Eatonville UGA to accommodate a hoped-for
21 industrial center was non-compliant in light of the vacant and undeveloped land already
22 included in the Town.
23
24

25 **The Board finds and concludes** there is no evidence in the record to support the
26 1,263-acre size of the UGA expansion area. It is unclear whether 1,263 acres is too much
27 land, too little land, or just the right amount of land to match the OFM 20-year urban growth
28 projection. The Board finds and concludes that Petitioners have carried their burden of proof
29 in demonstrating that Benton County's action in adopting Resolution 2014-091 violated
30

31
32 ⁷³ IR 91, City of Kennewick Community Planning Dept. Industrial Analysis, dated 2/11/2014.

⁷⁴ EWGMHB Case No. 07-1-0004c, Order on Compliance (May 26, 2010), at 17-24.

⁷⁵ (West Richland UGA), EWGMHB Case No. 09-1-0010c, Final Decision and Order (Dec. 2, 2009).

⁷⁶ CPSGMHB Case No. 10-3-0003c, Final Decision and Order (August 2, 2010), p. 48.

1 RCW 36.70A.110 and RCW 36.70A.115 and was not consistent with Benton County
2 Planning policies #3 and #4, by not basing its UGA expansion on planned population
3 growth. Further, the UGA amendment was not consistent with the Benton County Planning
4 Policy #9 and RCW 36.70A.100, RCW 36.70A.130, RCW 36.70A.210, and UGA planning
5 goal RCW 36.70A.020(2) because the amendment did not focus this UGA growth into
6 existing urban areas or areas with urban character, and does not restrict the type or size of
7 industrial use or provide for development regulations that would control inappropriate urban
8 development in surrounding rural areas.
9

10 Upon remand, the City and County should address the following issues pertaining to
11 the UGA expansion for industrial purposes:

- 12 1. Determine whether the additional industrial land meets the needs of the planned
13 population growth.
- 14 2. Determine the amount of additional land that is needed for industrial purposes,
15 including the type of use planned for and the size of the parcels needed.
- 16 3. Identify the controls planned to restrict the size and type of industrial uses for
17 this UGA expansion, to prevent its use for residential and commercial purposes
18 that duplicate already available lands, and compete with existing vacant and
19 under-utilized industrial lands, and result in urban sprawl.
- 20 4. Document the development regulations planned to restrict inappropriate urban
21 growth and low density development in areas surrounding the new UGA area.
22
23

24 **Issue #1 – De-designation of Agricultural Lands**

25 **Did Benton County’s adoption of Resolution No. 2014-191, including the de-**
26 **designation of the 1,263 acres from “GMA Agricultural” (the county’s**
27 **comprehensive plan designation for agricultural lands of long-term commercial**
28 **significance), violate RCW 36.70A.020(8), RCW 36.70A.030(2) and (10), RCW**
29 **36.70A.050(3), RCW 36.70A.060, RCW 36.70A.070 (internal consistency); RCW**
30 **36.70A.100, RCW 36.70A.130, RCW 36.70A.170, RCW 36.70A.210, WAC 365-190-**
31 **050, or Benton County Wide Planning Policies #1, #8, or #9?**
32

1 **Applicable Law**

2 RCW 36.70A.020 (8) provides that counties and cities should encourage the
3 conservation of productive agricultural lands, and discourage incompatible uses.

4 RCW 36.70A.030: Definitions:

5 (2) "Agricultural land" means land primarily devoted to the commercial
6 production of "various categories of agriculture" and has long-term
7 commercial significance for agricultural production.

8
9 (10) "Long term commercial significance" includes the growing capacity,
10 productivity, and soil composition of the land for long-term commercial
11 production, in consideration with the land's proximity to population areas, and
the possibility of more intense uses of the land.

12 RCW 36.70A.050(3): The Dept. of Commerce shall establish guidelines under
13 chapter 34.05 RCW to guide in the classification of Agricultural Lands. These guidelines
14 shall be the minimum guidelines that apply to all jurisdictions, but also shall allow for
15 regional differences.
16

17 RCW 36.70A.060(1)(a): Each county and city shall adopt development regulations to
18 assure the conservation of agricultural lands designated under RCW 36.70A.170.

19 RCW 36.70A.070 (internal consistency): The plan shall be an internally consistent
20 document and all elements shall be consistent with the future land use map.

21 RCW 36.70A.100: The comprehensive plan of each county and city shall be
22 regionally coordinated and consistent.
23

24 RCW 36.70A.130: Each comprehensive land use plan and development regulations
25 shall be updated at least on the schedule set by law. Any amendment of development
26 regulations shall be consistent with the comprehensive plan.

27 RCW 36.70A.170: Each county shall designate agricultural lands that are not already
28 characterized by urban growth and that have long term significance for the commercial
29 production of food or other agricultural products.
30

31 RCW 36.70A.210: Counties shall adopt county-wide planning policies and cities and
32 county planning policies shall be consistent as required by RCW 36.70A.100.

1 WAC 365-190-050: Department of Commerce criteria for the designation of
2 agricultural lands:

3 (2)Once lands are designated, counties and cities planning under the act
4 must adopt development regulations that assure the conservation of
5 agricultural resource lands. . . .

6 (3)(b)(i) The intent of a landowner to use land for agriculture or to cease such
7 use is not the controlling factor in determining if land is used or capable of
8 being used for agricultural production.

9 Benton County's County Wide Planning Policies:

10 #1 The Comprehensive Plans of Benton County and each of the cities
11 therein shall be prepared and adopted with the objective to facilitate
12 economic prosperity by accommodating growth consistent with the following:

13 1. Urban Growth. Encourage development in urban areas where adequate
14 public facilities exist or can be provided in a cost efficient manner. . . .

15
16 6. Natural resource industries. Maintain and enhance natural resource-
17 based industries, including productive agricultural, fisheries and mineral
18 industries. Encourage the conservation of productive agricultural lands
19 and discourage incompatible uses. . . .

20 10. Public facilities and services. Ensure that needed public facilities
21 and services necessary to support development shall be adequate to
22 serve development at the time the development is available for
23 occupancy. . . .

24 #8. Wherever possible, the placement of an urban growth line into an area of
25 potential intensive commercial agriculture shall be avoided, unless an
26 adequate open space buffer within the UGA is provided.

27 #9. The appropriate directions for the expansion of urban growth areas are
28 those which are unincorporated lands substantially engrossed by urban
29 development; areas with existing service infrastructure; lands adjacent to
30 corporate limits and confined on the other side by major features such as
31 highways; and existing rural residential development characterized by
32 compromised agricultural productivity; average lot sizes less than 10 acres;
and existing streets and utility services.

1 **Positions of the Parties**

2 Petitioner contends that the selection and de-designation of prime agricultural lands
3 by the County in this amendment action is a particularly egregious violation of the GMA,
4 GMA goals, and Benton County Wide Planning Policies. According to Petitioner, the land
5 included in this amendment meets all of the requirements for designation as agricultural
6 lands of long term commercial significance in the GMA. It is outside the City of Kennewick's
7 UGA, separated from the city by a major freeway. Further, there are other UGA lands better
8 suited for selection which would be more consistent with County and GMA policies.
9

10 The City of Kennewick argues that the land selected is ripe for de-designation
11 because it is no longer viable for economic agricultural production. This section of land is
12 extremely well suited to meet the industrial needs of Kennewick and Benton County. It is
13 situated next to key interstate highways, it provides a large enough area of easily
14 developable land to accommodate the larger parcels of land needed by potential industrial
15 users, and it is next to the City of Kennewick with its available urban utilities and services.
16

17 **Board Analysis**

18 The Petitioner and the Respondent have presented extensive materials in their briefs
19 about whether the de-designation of the 1,263 acres of land involved in this UGA expansion
20 is appropriate, in particular the qualities of this particular section of agricultural land and
21 whether it is agricultural land of "long term commercial significance," a key consideration in
22 the initial designation of the lands and, appropriately, any de-designation of agricultural
23 resource lands. The key issue in this case, however, is whether it was appropriate to
24 consider de-designation of this section of land in isolation of a county-wide or area-wide
25 study of de-designation.
26
27

28 The Department of Commerce minimum guidelines for the classification of
29 Agricultural Resource Lands, WAC 365-190-050, developed to implement GMA sections
30 RCW 36.70A.030, RCW 36.70A.050, and RCW 36.70A.170 regarding the identification and
31 designation of these lands, state the following:
32

1 (1) In classifying and designating agricultural resource lands, counties must
2 approach the effort as a county-wide or area-wide process. Counties and
3 cities should not review resource lands designations solely on a parcel-
4 by-parcel process.

5 Before being de-designated, this section of land was part of many square miles of
6 contiguous agricultural land south of the I-82 interchange in a GMA-protected agricultural
7 district which extends to the Washington-Oregon border.⁷⁷ The County site visit
8 photographs confirm its agricultural use.⁷⁸ I-82 separates the City of Kennewick Urban
9 Growth Area from these agricultural lands and acts as a man-made buffer protecting the
10 agricultural lands south from urban encroachment.⁷⁹

11 The Benton County Planning Department reported that this amendment to
12 Kennewick's UGA is not consistent with several Benton County Wide Planning Policies,
13 including the following:⁸⁰

14 Policy #1, part 6, Maintain and enhance natural resource-based industries,
15 including productive agricultural, fisheries and mineral industries. Encourage
16 the conservation of productive agricultural lands and discourage incompatible
17 uses.

18 The staff reported the amendment was not consistent with Policy #1 because "the proposed
19 UGA expansion site is designated as agricultural land of long term commercial significance
20 as defined in RCW 36.70A.030(10) and recognized as such in both the County's
21 Comprehensive Plan and zoning code. Once resource lands have been designated, they
22 must be further protected under RCW 36.70A.060."⁸¹

23 Policy #8. Wherever possible, given consideration of all other variables,
24 such as existing unused service infrastructure, the placement of an urban
25 growth line into an area of existing or potential intensive commercial
26 agriculture shall be avoided, unless an adequate open space buffer within
27 the urban growth area is provided.
28

29
30 ⁷⁷ IR 554, Benton County Analysis – Designation of Agricultural Lands of Long-Term Significance, p.4.

31 ⁷⁸ IR 488, Site Visit Photos taken 6/5/2013.

32 ⁷⁹ IR 554, p.4.

⁸⁰ IR 460, Benton County Planning Department memo to the Benton County Planning Commission, dated July
1, 2013, pp.11-15.

⁸¹ *Id.*, p.11.

1 The amendment was not consistent with Policy #8 because “the proposed expansion of the
2 UGA includes lands used for commercial agriculture designation Growth Management Act
3 Agriculture and protected under RCW 36.70A.170 as agricultural land of long-term
4 commercial significance.”⁸²

5 Policy #9. The appropriate directions for the expansion of urban growth
6 areas are those which are unincorporated lands substantially engrossed by
7 urban development.

8 County planning staff found the amendment was not consistent with Policy #9 for a number
9 of reasons including the following.⁸³

- 10 • The proposed UGA **site is under agricultural use** and is devoid of any urban
11 development.
- 12 • The proposal area does not have public facilities available, nor is it adjacent to
13 existing service infrastructure.
- 14 • The proposed area is separated from the city by I-82 to the north and SR 395 to
15 the east. The City’s proposal leaps over vacant lands within the city limits.
- 16 • The site is devoid of any urban or rural development, and **fully engulfed in**
17 **agricultural activity only**.
- 18 • The average lot size is greatly in excess of 10 acres, at an average of 260 acres
19 per parcel.
- 20 • The acreage proposed for inclusion within the UGA is **in agricultural uses** and
21 cannot be characterized as urban growth that has adequate public service and
22 service capacities to serve development; the land immediately northeast of the
23 proposal, access the I-82 and SR 395 corridors that is within Kennewick’s Urban
24 Growth Area is mostly undeveloped.

25 The Board has previously noted the State Supreme Court decision holding that
26 county comprehensive plan amendments must comply with the county wide planning
27

28
29
30
31
32 ⁸² *Id.*, p. 14.

⁸³ *Id.*, pp.14-15.

1 policies.⁸⁴ The Board finds Petitioners have met their burden in proving the Kennewick UGA
2 expansion onto agricultural lands violates the cited CPPs.

3 The Benton Planning Department also made pertinent comments about the proposed
4 de-designation of agricultural lands in this amendment application:

5 A remedy to avoiding de-designation of agricultural lands requires the city to
6 re-evaluate its existing vacant and underdeveloped land base for suitable
7 sites available to accommodate its goals for additional industrial use
8 designations . . .⁸⁵

9 [Growth Management] Board decisions have wrestled with the question of
10 whether land that has better characteristics for a desired economic purpose
11 can be added to a UGA that is already oversized. In each of these cases, the
12 anti-sprawl/UGA sizing requirements of the GMA trump the economic
13 development goals of the local jurisdiction. If the Town or County finds that
14 they have not planned adequate[ly] for all the non-residential needs of the
15 UGA, the remedy is re-designation of excess residential land for industrial or
16 other uses, not incremental expansion of the UGA. North Clover Creek, 10-3-
17 0003c, FDO (8-2-10) at 46.⁸⁶

18 Based on its consistency review and analysis, the Benton County Planning Staff
19 reported to the Planning Commission that the City of Kennewick's UGA proposal is not
20 consistent with the mandates and provisions of the Growth Management Act, Washington
21 Hearings Boards' case law, the Benton County Comprehensive Plan, the Benton County
22 Wide Planning Policies, and relevant Benton County Codes. The Planning Staff
23 recommended that the Planning Commission forward a recommendation to the Board of
24 Commissioners **that the City of Kennewick's application to expand its Urban Growth
25 Area boundary to include an additional 1,263 acres, be denied.**⁸⁷

26 In a subsequent Planning Commission public hearing, the commission members
27 expressed concern about using the agricultural land for industrial purposes. One member
28

29
30 ⁸⁴ *King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn.2d 161, 175-76, 979
31 P.2d 374, 380 (1999). This holding is based on RCW 36.70A.100 and RCW 36.70A.210. *Id.*

32 ⁸⁵ IR 460, Benton County Planning Department memo to the Benton County Planning Commission, dated July
1, 2013, p .7.

⁸⁶ *Id.*, pp. 7-8.

⁸⁷ *Id.*, p. 10.

1 stated that maybe it was time to review classifications in that particular area but, at this time,
2 it was premature to enter it into the UGA. Others noted that this is farmland but, even if
3 water is limited, there are a variety of farm uses and it doesn't have to be used for wheat.⁸⁸
4 In the meeting, the County Planning staff clarified that the agricultural land in this UGA
5 amendment still qualified for designation as agriculture in the same manner that it was
6 originally designated by the County:⁸⁹
7

8 [T]here had been a lot of discussion regarding the analysis of the lands of
9 long term commercial significance and there was some discussion about
10 "prime land-if irrigated" and those were not the criteria that we used for
11 determination of the lands of long term commercial significance, we used the
12 Soil Conservation Soil Maps-NRCS and what they use is CFR (PCM 1.18) it
13 is a Federal regulation which describes the prime farmlands over 90
14 percent of the soil found on this site meet the NRCS prime classification of
15 agriculture This goes on to determine what unique soils are, the County
16 was required to protect prime and unique soils [based on the County's
17 analysis on PCM CH 1.16] **this land is still suitable and capable of
18 agriculture production.**⁹⁰

19 The intent of the landowner to use the land for agriculture or cease such use
20 is not the controlling factor in determining how the land is designated for
21 agricultural use So basically the state is pretty specific about how we
22 designate and what is required to de-designate. **De-designation requires
23 us to say it doesn't have any of these qualities, it has urban encroachment,
24 it's no longer suitable for agriculture and the County analysis does not
25 support that finding.**⁹¹

26 The Board notes that the de-designation of agricultural land in this UGA amendment
27 was not done as part of a County or area-wide study. It was done by the City of Kennewick
28 because it had identified these lands as highly desirable lands next to key freeways, if used
29 for industrial purposes. In *Clark County v. Western Washington Growth Management
30 Hearings Board*,⁹² the Court of Appeals affirmed the Board's ruling that freeway-frontage

31 ⁸⁸ IR 278, Benton County Planning Commission regular meeting of 10/15/2013, p. 10.

32 ⁸⁹ *Id.*, pp. 8-10.

⁹⁰ *Id.*, pp. 9-10.

⁹¹ *Id.*, p. 8.

⁹² *Clark County v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 254 P.3d 862 (2011); vacated in
unrelated part, *Clark County v. W. Wash. Growth Mgmt. Hearings Bd.*, 177 Wn.2d 136, 298 P.3d 704 (2013).

1 agricultural land must retain its agricultural designation under GMA criteria. The Court said:
2 “Clark County’s reason for de-designating agricultural areas was that they border Interstate
3 5, therefor presenting a unique development opportunity for La Center. But the County’s
4 desire to further economic development cannot outweigh its duty to designate and conserve
5 agricultural lands.”⁹³ The Court found the record supported the Board’s determination of
6 agricultural significance. In addition, the Court noted the speculative nature of the economic
7 opportunity relied on by Clark County.⁹⁴ In the present case, which also appears
8 speculative, the Board finds Petitioners have met their burden of demonstrating the
9 Kennewick UGA expansion land continues to meet the criteria for agricultural designation,
10 and the desired economic opportunity does not trump GMA resource conservation criteria.

11
12 The first requirement of WAC 365-190-050, the Department of Commerce “minimum
13 guideline” for agricultural resource lands, states:

14
15 (1) In classifying and designating agricultural resource lands, counties must
16 approach the effort as a county-wide or area-wide process. Counties and
17 cities should not review resource lands designations solely on a parcel-by-
18 parcel process.

19 The Board considers Benton County’s de-designation of agricultural lands for this
20 small section of land, in isolation from a much larger County or area-wide study to be
21 inappropriate and, by de-designating lands that qualify as agricultural lands of long term
22 commercial significance, the County violated WAC 365-190-050 and corresponding GMA
23 sections RCW 36.70A.030, RCW 36.70A.050, and RCW 36.70A.170. The Board concludes
24 the UGA amendment also fails to protect the County’s agricultural lands as required by
25 Benton County Wide Planning Policies #1, #8, and #9, and related GMA goal RCW 36.70A.
26 020(8) and GMA sections RCW 36.70A.060, RCW 36.70A.100 and RCW 36.70A.210.

27 This amendment to the County’s Land Use Map is also not consistent with Benton
28 County’s Comprehensive Plan in violation of GMA sections RCW 36.70A.070, RCW
29 36.70A.100, and RCW 36.70A.130.

30
31

⁹³ 161 Wn. App. at 242.

32 ⁹⁴ 161 Wn. App. at 243-44: “At the time of the County’s decision, the *possible* approval of the pending trust application and the *possible* building of a casino were too attenuated to support the County’s position.” (emphasis in original)

1 The Board is left with a firm and definite conviction that a mistake has been made.
2 The Board finds and concludes that Benton County's adoption of Resolution No. 2014-191
3 is clearly erroneous in view of the entire record before the Board and in light of the goals
4 and requirements of the Growth Management Act.

5
6 **Invalidity:**

7 Petitioners request that the Board make a Determination of Invalidity for the
8 challenged amendments in Resolution No. 2014-191.

9 Under RCW 36.70A.302(1), the Board may determine that part or all of a
10 comprehensive plan or development regulations are invalid if the Board:
11

12 (a) Makes a finding of noncompliance and issues an order of remand under
13 RCW 36.70A.300;

14 (b) Includes in the final order a determination, supported by findings of fact
15 and conclusions of law, that the continued validity of part or parts of the plan
16 or regulation would substantially interfere with the fulfillment of the goals of
17 this chapter; and

18 (c) Specifies in the final order the particular part or parts of the plan or
19 regulation that are determined to be invalid, and the reasons for their
20 invalidity.

21 A Determination of Invalidity can only be issued if the Board finds Benton County's
22 adoption of the amendments in Resolution No. 2014-191 fails to comply with the GMA and
23 that its continued validity would substantially interfere with the fulfillment of the GMA's goals.
24 GMA Planning Goals 2 and 8 in RCW 36.70A.020 are stated as follows:
25

26 (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped
27 land into sprawling, low-density development. . . .

28 (8): . . . Encourage the conservation of . . . productive agricultural lands,
29 and discourage incompatible uses.

30 The Board has determined that Benton County failed to comply with the GMA and
31 has remanded this matter to the County to achieve compliance with several GMA goals and
32 requirements and with Benton County Wide Planning Policies #1, #3, #4, #8 and #9.

1 The Board hereby makes the following Invalidity Findings of Fact and/or Conclusions
2 of Law:

3 1. Adoption of Benton *County Resolution No.2014-191*, which added 1,263 acres of
4 land to the City of Kennewick's UGA, fails to comply with the Growth Management Act.

5 2. There is no evidence in the record indicating a risk for project vesting in this case,
6 which would render GMA planning procedures as ineffectual and moot. It is highly unlikely
7 that inappropriate development might occur during remand on this amendment.
8

9 The Board declines to enter a determination of invalidity.

10 **VII. ORDER**

11
12 Based on the foregoing, the Board finds and concludes that Benton County's
13 adoption of Resolution No. 2014-191 failed to comply with RCW 36.70A.030, RCW
14 36.70A.050, RCW 36.70A.060, RCW 36.70A.070, RCW 36.70A.100, RCW 36.70A.110,
15 RCW 36.70A.115, RCW 36.70A.130, RCW 36.70A.170, RCW 36.70A.210 and RCW
16 36.70A.1301, and with Benton County Wide Planning Policies #1, #3, #4, #8 and #9.
17 Further, Resolution No. 2014-0191 was not guided by the GMA Planning Goals in RCW
18 36.70A.020(2) and RCW 36.70A.020(8).
19

20 Benton County's enactment of Resolution No. 2014-0191 was clearly erroneous in
21 view of the entire record before the Board and in light of the goals and requirements of the
22 GMA. Resolution No. 2014-0191 is remanded to Benton County, and the County shall take
23 further actions to come into compliance with the Growth Management Act consistent with
24 this Final Decision and Order.
25

26 The following schedule for compliance, briefing and hearing shall apply:
27
28
29
30
31
32

Item	Date Due
Compliance Due	April 13, 2015
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	April 27, 2015
Objections to a Finding of Compliance	May 11, 2015
Response to Objections	May 21, 2015
Compliance Hearing - Telephonic Call 1-800-704-9804 and use pin 4771313#	June 1, 2015 10:00 a.m.

Entered this 15th day of October, 2014.

Charles Mosher, Board Member

Unavailable for Signature

Raymond Paoella, Board Member

Margaret Pageler, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.⁹⁵

⁹⁵ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.